THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.19643 of 2005

Date:27.09.2005

Gudisa Prasanna

--------PETITIONER

The Commissioner of Sugars and another

---------RESPONDENTS

ORDER:

The petitioner has been working as a Weighbridge Clerk in the Kovur Co-operative Sugar Factory Limited, Nellore, 2nd respondent herein. He was removed from service, through proceedings, dated 09.08.205, on the ground that he failed to remit a sum of Rs.60,000/-, representing the advance kept with him, in spite of notices. The petitioner challenges the same in this writ petition.

It is contended that the respondents have not issued any charge sheet, much less conducted any departmental enquiry, and that straight away removed the petitioner from service. It is also stated that though the petitioner is not the junior most employee, the 2nd respondent has invoked the provisions of 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), to add a semblance of legality to it.

In the counter affidavit filed on behalf of the 2nd respondent, it is stated that the petitioner and several employees failed to remit the amounts that were entrusted to them, for payment to the labourers, in spite of several notices and that left with no alternative, the impugned order was passed. It is also stated that the question of conducting departmental enquiry would have arisen, if only

the petitioner responded to the show cause notice.

The learned counsel for the petitioner had advanced several contentions touching on the merits of the matter, on the lines of the pleadings contained in the affidavit. The learned Standing Counsel tried to justify the impugned order, by stating that the petitioner did not respond to the show cause notices at all.

A perusal of the impugned order discloses that it was preceded by several notices, requiring the petitioner to remit the amount. However, no charge sheet, framing any charges of misconduct, was issued. It hardly needs any emphasis that before the punishment of removal from service is imposed, the employer is under obligation to conduct the departmental enquiry. The failure on the part of the petitioner to respond to the show cause notices would, at the most, entail in recovery of that amount. Any step for removal of the petitioner could have been taken, only after framing charges and conducting departmental enquiry. When there was no charge sheet, the question of the petitioner not responding to the same does not arise. Therefore, there is a clear violition of the settled procedure, in the matter of removal of the petitioner from service. Further, the compliance with Section 25-F of the Act hardly makes any difference, in the context of this case. It is not as if the petitioner is the junior most employee, so that he could have been retrenched by following the principle of 'last come first go'.

Therefore, this Court is left with no alternative, except to set aside the impugned order. However, having regard to the nature of the lapse pointed out on the part of the petitioner, this Court is not inclined to order his reinstatement. Instead, it is left open to the 2nd respondent to take further steps, in accordance with law, within a stipulated period.

For the foregoing reasons, the writ petition is allowed-

a. setting aside the impugned order, dated 09.08.2005;

b. leaving it open to the 2nd respondent to issue a charge sheet to the petitioner, within a period of four weeks from today, and to conclude the disciplinary proceedings against the petitioner, in accordance with law, within a period of three months thereafter; and

c. directing that the petitioner shall be continued under suspension, till the conclusion of the disciplinary proceedings.

There shall be no order as to costs.

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27.09.2005

Note: Issue C.C. in three days.

(B/o)

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